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No. 83-911
No. 83-927

IN THE

Supreme Court of the United States

October Term, 1983

UNITED STATES BREWERS ASSOCIATION, INC., *et al.*,
Appellants,

vs.

ABE RODRIGUEZ, DIRECTOR OF THE NEW MEXICO DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW MEXICO

MOTION OF APPELLEE TO DISMISS OR AFFIRM

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QUESTION PRESENTED

Whether New Mexico's "price affirmation" law, regulating prices which may be charged to New Mexico wholesalers by those importing beer into New Mexico, is a constitutional exercise of state powers under the Twenty-first Amendment to the United States Constitution, as against a claim that the law offends the Commerce Clause and Supremacy Clause of the United States Constitution by reason of federal antitrust law preemption?

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ABE RODRIGUEZ, DIRECTOR OF THE NEW MEXICO DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW MEXICO

MOTION OF APPELLEE TO DISMISS OR AFFIRM

Pursuant to Rule 16 of the Rules of the United States Supreme Court, appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of the State of New Mexico. This motion is submitted in response to both the jurisdictional statement of Anheuser-Busch, Inc. and that of the remaining appellants, United States Brewers Association, *et al.* This motion is made on grounds that the appeal does not present a substantial federal question and that the questions raised are so unsubstantial as not to merit further argument because the governing law is clear and the decision below was correct.

STATUTES INVOLVED

This appeal raises the question of the validity of certain New Mexico statutes known as the Discrimination in Selling Act. This Act was enacted by New Mexico Laws 1967, Chapter 269 and was amended in 1979 to substitute "alcoholic liquor" as defined in Section 60-3-1 NMSA 1978 for "spiritous liquors" as defined in that section. New Mexico laws 1979, Chapter 83, Section 1. This amendment had the effect of including beer within the provisions of the Discrimination in Selling Act. A copy of these statutes appear at Appendix A.

In pertinent part, the Act requires that price schedules be filed with the Department of Alcoholic Beverage Control reflecting the price to be paid by New Mexico wholesalers for beer which the wholesalers purchase and further requires that an affirmation be filed stating that the "bottle and case price of alcoholic liquor to wholesalers set forth in the schedule is no higher than the lowest price at which such item of liquor was sold by the brand owner, or any related person, to any wholesaler anywhere in any other state of the United States . . . at any time during the calendar month immediately preceding the month in which the schedule is filed." Failure to file the affirmation results in invalidity of the price schedule and consequent prohibition of sale to or purchase by the New Mexico wholesaler of the item during the period of the schedule.

In 1981 the Act was repealed and re-enacted as part of a new Liquor Control Act. Such re-enacted law appears at Sections 60-8A-12 through 60-8A-19 NMSA 1978 (1981 Repl.) In pertinent part, the 1981 law deleted from the affirmation section the phrase, "at any time during the calendar month immediately preceding the month in which the schedule is filed."

STATEMENT OF THE CASE

The Discrimination in Selling Act, as amended in 1979 to encompass brewed products, was challenged by appellants in the New Mexico district court. Upon the request of appellants, a stay of enforcement as to appellants was agreed to by appellee conditioned upon execution by appellants of bonds in which they agreed to pay to the State of New Mexico the difference between the prices at which products were sold during the pendency of the stay and the prices at which the Act would have required them to be sold under the Act. Liability upon the bonds attaches if appellants are unsuccessful in challenging the Act. These affirmation statutes, insofar as they pertain to appellants, have not yet been enforced due to the stay. Appellants have resisted enforcement and pertinent discovery concerning bond liability until the proceeding in this Court is concluded.

The district court granted summary judgment in favor of the appellee on or about January 7, 1980, and the New Mexico Supreme Court affirmed the grant of summary judgment. The New Mexico Supreme Court decided this Court's holdings in *Joseph E. Seagram & Sons, Inc. v. Hostetter*, 384 U.S. 35, *reh'g denied*, 384 U.S. 967 (1966) and *Rice v. Norman Williams Co.*, 458 U.S. 654 (1982) were controlling. The New Mexico Supreme Court, therefore, rejected appellants' contentions that the Act violates the Commerce Clause to the United States Constitution and the Supremacy Clause by reason of federal antitrust statutory preemption. It instead upheld the Act as a valid exercise of the State's powers under the Twenty-first Amendment to the Constitution.

The New Mexico Supreme Court's opinion was filed July 21, 1983. The New Mexico Supreme Court did not address, nor was it specifically requested to address, the effect, if any, of

the above-mentioned change to the Act made by the 1981 laws.[1]

THIS CASE PRESENTS NO SUBSTANTIAL QUESTION NOT PREVIOUSLY DECIDED BY THIS COURT.

Joseph E. Seagram & Sons, Inc. v. Hostetter, 384 U.S. 35, *reh'g denied*, 384 U.S. 967 (1966), upheld the validity of a state statute virtually identical to the New Mexico Discrimination in Selling Act, Sections 60-12-1, *et seq.*, NMSA 1978, now Sections 60-8A-12, *et seq.*, NMSA 1978 (1981 Repl.), in the face of challenges identical to those here. New Mexico's Discrimination in Selling Act is the same in all pertinent respects as the New York law involved in *Seagram*. Both laws require that liquor prices to wholesalers be "no higher than the lowest price" at which sales were made to wholesalers anywhere in the United States during the preceding month.

In *Seagram*, appellants attacked the New York law contending that its provisions placed an illegal burden upon interstate commerce, conflicted with federal antitrust legislation and thus was forbidden by the Supremacy Clause. Because the New York law had not been enforced as to the appellants due to stays, which situation is identical to this case, this Court concerned itself "only with the constitutionality of those provisions on their face." *Id.* at 41. *Seagram* involved the issue of "facial invalidity", not, as appellants argue, a "balancing of interests"

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[1] The New Mexico Supreme Court upheld the Discrimination in Selling Act, as amended in 1979. The 1981 law deleting "preceding month" was mentioned by appellants in pleadings relating to the *Healy* decision. Although appellants now request that this Court remand this case to the New Mexico Supreme Court to determine the effect of this change as it relates to the issues raised in this Court, appellants did not so request in their motion for rehearing filed in the New Mexico Supreme Court, a copy of which is attached at Appendix B.

unique to New York. With respect to the Commerce Clause challenge, this Court stated:

> The mere fact that Section 9 is geared to appellants' pricing policies in other states is not sufficient to invalidate the statute. As part of its regulatory scheme for the sale of liquor, New York may constitutionally insist that liquor prices to domestic wholesalers and retailers be as low as prices offered elsewhere in the country. *Id.* at 43.

In *Seagram*, appellants also contended that the New York law violated the Supremacy Clause, claiming inconsistency between Section 9 of that law and the federal antitrust laws, specifically the Sherman Act and the Clayton Act, as amended by the Robinson-Patman Act. This Court stated:

> Section 9 imposes no irresistible economic pressure on the appellants to violate the Sherman Act in order to comply with the requirements of Section 9. . . . *Id.* at 45.

This Court also found that any potential conflict with the Robinson-Patman Act was "entirely too speculative", *Id.* at 46, and further noting:

> Moreover Section 7 of Chapter 531 has amended the ABC Law by granting the State Liquor Authority ample discretion to modify the schedule requirements. We cannot presume that the Authority will not exercise that discretion to alleviate any friction that might result should the ABC Law chafe against the Robinson-Patman Act or any other federal statute. *Id.* at 46.

Like the State Liquor Authority in New York, the Director of the New Mexico Department of Alcoholic Beverage Control is granted authority to premit deviation from the "price and discounts then in effect" for "good cause shown and for reasons not inconsistent with the purposes of the Discrimination in Selling Act."

The New Mexico Supreme Court thus ruled upon the Commerce Clause and Supremacy Clause issues before it in this case in the fashion dictated by this Court in *Seagram*. In addition, by permitting appellants to raise these issues again in a "concrete case" after enforcement when and if such case should arise, the New Mexico Supreme Court again adhered to *Seagram*, wherein this Court stated:

> Although it is possible that specific future applications of Chapter 531 may engender concrete problems of constitutional dimension, it will be time enough to consider any such problems when they arise. We deal here only with the statute on its face. And we hold that, so considered, the legislation is constitutionally valid. *Id.*, at 52.

This case is factually and legally identical to *Seagram*. The New Mexico Supreme Court unerringly followed the command of this Court in upholding New Mexico's Discrimination in Selling Act.

This Court reaffirmed its facial antitrust ruling made in *Seagram* in the case of *Rice v. Norman Williams Co.*, 458 U.S. 654 (1982). In *Rice*, this Court upheld a California "designation" statute requiring that licensed importers of distilled spirits be designated by the brand owner as an authorized importer. The statute was challenged on the basis of federal antitrust preemption. The California courts agreed that the statute was unconstitutional, enjoined enforcement and this Court reversed. In *Rice*, this Court stated:

> Our decisions in this area instruct us, therefore, that a state statute, when considered in the abstract, may be condemned under the antitrust laws only if it mandates or authorizes conduct that necessarily constitutes a violation of the antitrust laws in all cases, or if it places irresistible pressure on a private party to violate the antitrust laws in order to comply with the statute. *Id.*, at 661.

New Mexico's statutes do not mandate or authorize conduct that necessarily constitutes a violation of the antitrust laws in all cases nor do they impose irresistible pressure upon parties to violate the antitrust laws. The concurring opinion in *Rice* viewed the law in *Seagram* as a "public regulatory scheme", which scheme is less subject to antitrust challenge than a scheme permitting "private" regulatory power.

Appellants, conceding that the challenged New York law is "similar" to the 1979 New Mexico law,[2] have advanced no convincing argument to distinguish *Seagram* from the case at bar. The fact that beer is involved in this case does not distinguish it from *Seagram*. The Twenty-first Amendment to the United States Constitution does not distinguish between alcohol which is spiritous liquor and alcohol which is beer. The regulatory interests of New York are not dissimilar from the regulatory interests of New Mexico.

Appellants, in support of their arguments, rely principally upon *California Retail Liquor Dealers Assocation v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980) and *United States Brewers Association v. Healy*, 692 F.2d 275 (2nd Cir. 1982), summarily affirmed, No. 82-1493, 52 U.S.L.W. 3308 (Oct. 17, 1983).

Midcal was a resale price maintenance case. There, California law required distributors of wine to file with the state either fair trade contracts or price schedules. All California

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[2] Appellants U.S. Brewers Association, *et al.* address their arguments to the 1981 rather than the 1979 law. Although they argue that the 1981 New Mexico law is dissimilar from that involved in *Seagram* because such law deletes "preceding month", this Court in *Seagram* noted the existence of seventeen other state statutes which gear the affirmations to "cover prices in other states at the very time of sale" to the state requiring the affirmation. *Id.* at 45, and perceived no distinct Commerce Clause issue engendered because of those affirmations, stating only that the burden of gathering information required for the affirmations "might" be more onerous in those particular states.

retailers were required to sell wine at the price the distributors fixed. This Court stated, in upholding the California court's declaration of unconstitutionality, that the statute "plainly constitutes resale price maintenance." *Id.* at 103. This Court in *Rice* explained *Midcal* as holding that "the statute facially conflicted with the Sherman Act because it *mandated* resale price maintenance." 458 U.S. at 659. By contrast New Mexico law does not mandate resale price maintenance. The *Midcal* Court noted the *Seagram* decision and perceived no inconsistency between the two decisions.

Healy actually supports the appellee. Although invalidating Connecticut law, the *Healy* court stated:

> Given the latitude allowed a state under the Twenty-first Amendment to regulate the sale of liquor within its own borders, the holding in *Seagram* might well validate beer price regulation less intrusive than the present Connecticut statute, such as a requirement simply that a brewer set its Connecticut prices at the lowest levels it chooses to set in the surrounding states. 692 F.2d at 283, 284.

Here, New Mexico's statute requires simply that the brewers set their New Mexico prices at the lowest levels they choose to set in other states.

Healy involved a Connecticut statute acutely dissimilar from New Mexico's statute because it set minimum prices in other states which out-of-state manufacturers could charge out-of-state wholesalers.[3] Connecticut required an affirmation to the effect that the bottle, can, or case price to the wholesaler in Connecticut will be no higher than the lowest price at which each such item of beer is sold in any state bordering Connecticut "at any time during the calendar month covered by such posting".

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[3] The Connecticut statutes as depicted in *Healy* appear at Appendix C.

The posted prices governed the prices which could be charged for a period of one month following the posting.

Because the Connecticut statute was geared to the *future*, it effectively set minimum prices for the *future* which could be charged in the four-state area surrounding Connecticut. Once the price was posted in Connecticut, applicable to the succeeding month, the law set prices in other states for that succeeding month. As noted by the *Healy* court:

> Thus, the obvious effect of the Connecticut statute is to control the minimum price that may be charged by a non-Connecticut brewer to a non-Connecticut wholesaler in a sale outside of Connecticut. 692 F.2d at 282.

The *Healy* court distinguished *Seagram*, by stating:

> The New York statute differed significantly from the Connecticut statute, because, unlike Connecticut's beer price affirmation provisions which control brewers' future conduct in the states surrounding Connecticut, the New York law in *Seagram* merely required that New York prices reflect what had been charged elsewhere in the past. Thus, the New York law, although it affected the prices that manufacturers would choose to set in other states, did not limit the freedom of a manufacturer at any given time to raise or lower prices in any other state. 692 F.2d at 283.

New Mexico law does not control future prices at which a brewer may wish to sell its beer in other states. Nor does the 1981 New Mexico law, Section 60-8A-15, *supra*, operate so as to set future prices in other states.

Although appellants argue that an interaction of New Mexico's and one other state's affirmation laws utilizing "preceding month" could result in the inability to ever raise prices again in those states, appellee would point out that New Mexico's law has been in effect with respect to spiritous liquors

since 1967, that laws which other states may adopt is a matter of conjecture, that a state may presumably fix liquor prices, *see* concurring opinion in *Rice*, and, further, that the "preceding month" language no longer appears in New Mexico's statutes. Therefore, whatever interaction could have occurred between 1979 and 1981 can, obviously, not occur now.

Finally, appellee submits that this Court should not entertain a challenge to New Mexico's statutes based on the factual consequences of the law until a future case, if one should arise, squarely presents factual consequences in a specific enforcement controversy.[4] Other questions of statutory interpretation may arise upon enforcement of the statutes, such as the existence of federal statutory constraints imposed upon the Director's exercise of discretion to permit deviation from price schedules in the context of a specific fact situation or the meaning of "discounts" or permitted price differentials "which make only due allowance for differences . . . in the actual cost of delivery" in the context of specific fact situations. But at the present time, these questions are merely speculative. This case is not sufficiently concrete to entertain any challenge other than a facial challenge to the statutes, and, when so considered, the statutes are constitutional.

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[4] Appellants have, at pages 32 and 33 of their brief-in-chief, argued the availability of avoidance mechanisms, such as using odd-sized cans in New Mexico, a result which the Connecticut statutes would clearly not have permitted. Section 30-63c(b). Whether there is such avoidance mechanism is a question of statutory interpretation which may arise upon bond litigation or in other contexts.

CONCLUSION

Appellee respectfully submits that this appeal should be dismissed or the decision of the New Mexico Supreme Court affirmed.

Respectfully submitted,

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January 25, 1984

APPENDIX A

The 1979 law–New Mexico Statutes Annotated 1978, §§60-12-1 through 60-12-10 are as follows:

60-12-1. SHORT TITLE.

This act [60-12-1 to 60-12-10 NMSA 1978] may be cited as the "Discrimination in Selling Act."

60-12-2. FILING OF SCHEDULES REQUIRED.

No brand of alcoholic liquor shall be sold to or purchased by a wholesaler, irrespective of the place of sale or delivery, unless a schedule is filed with the director of the department of alcoholic beverage control and is then in effect. For the purposes of the Discrimination in Selling Act [60-12-1 to 60-12-10 NMSA 1978], "alcoholic liquor" means alcoholic liquor as defined in Section 60-3-1 NMSA 1978.

60-12-3. FORM OF SCHEDULE.

The schedule shall be in writing, duly verified and filed in the number of copies, form and time as required by the chief of the liquor control division [director of the department of alcoholic beverage control]. It shall contain, with respect to each item, the exact brand or trade name, capacity of package, nature of contents, age and proof where stated on the label, the number of bottles contained in each case, the bottle and case price to wholesalers, the net bottle and case price paid by the seller, which prices, in each instance, shall be individual for each item and not in combination with any other item, the discounts for quantity, if any, and the discounts for time of payment, if any.

60-12-4. SELLING TO WHOLESALERS AT PRICES DIFFERENT THAN SHOWN IN SCHEDULE.

The brand of alcoholic liquor shall not be sold to wholesalers except at the price and discounts then in effect unless prior

written permission of the chief of the liquor control division [director of the department of alcoholic beverage control] is granted for good cause shown and for reasons not inconsistent with the purposes of the Discrimination in Selling Act [60-12-1 to 60-12-10 NMSA 1978].

60-12-5. FILING OF SCHEDULES.

The schedule shall be filed by the owner of the brand who is the holder of a nonresident license issued by the division of liquor control [department of alcoholic beverage control].

60-12-6. FILING OF AFFIRMATION.

There shall be filed in connection with, and when filed shall be deemed part of, the schedule filed for a brand of alcoholic liquor, an affirmation duly verified by the owner of the brand of alcoholic liquor that the bottle and case price of alcoholic liquor to wholesalers set forth in the schedule is no higher than the lowest price at which such item of liquor was sold by the brand owner, or any related person, to any wholesaler anywhere in any other state of the United States or in the District of Columbia, or to any state or state agency which owns and operates retail liquor stores at any time during the calendar month immediately preceding the month in which the schedule is filed. As used in this section "related person" means any person.

A. in the business of which the brand owner has an interest, direct or indirect, by stock or other security ownership, as lender or lienor, or by interlocking directors or officers;

B. in the exclusive, principal or substantial business of selling a brand or brands of alcoholic liquor purchased from the brand owner; or

C. who has an exclusive franchise or contract to sell the brand or brands.

60-12-7. FAILURE TO FILE [AFFIRMATION]; SCHEDULE DEEMED INVALID.

In the event an affirmation with respect to any item of alcoholic liquor is not filed within the prescribed time, any schedule for which the affirmation is required shall be deemed invalid with respect to that item of alcoholic liquor, and no such item may be sold to or purchased by any wholesaler during the period covered by any such schedule.

60-12-8. DETERMINATION OF LOWEST PRICE.

In determining the lowest price for which any item of alcoholic liquor was sold in any other state or in the District of Columbia, or to any state or state agency which owns and operates retail liquor stores, appropriate reductions shall be made to reflect all discounts in excess of those to be in effect under such schedule, and all rebates, free goods, allowances and other inducements of any kind whatsoever offered or given to any such wholesaler, state or state agency or retailer, as the case may be, purchasing such item in the other state or in the District of Columbia; provided nothing contained in the Discrimination in Selling Act [60-12-1 to 60-12-10 NMSA 1978] shall prevent differentials in price which make only due allowance for differences in state taxes and fees, and in the actual cost of delivery. As used in this section, "state taxes and fees" means the excise taxes imposed or the fees required by any state or the District of Columbia upon, or based upon, the gallon of liquor, and the term "gallon" means two hundred thirty-one cubic inches.

60-12-9. VIOLATION: PENALTY.

A. Violation of the Discrimination in Selling Act [60-12-1 to 60-12-10 NMSA 1978] is a violation of the Liquor Control Act [7-17-1 to 7-17-11, 7-24-1 to 7-24-7, 60-3-1 to 60-11-4 NMSA 1978].

B. Notwithstanding any other penalty provided in the Liquor Control Act, any person who knowingly makes a false statement in any affirmation made and filed pursuant to the Discrimination in Selling Act shall be liable for suspension of any license issued by the division of liquor control [department of alcoholic beverage control] for a period not to exceed five days for the first offense and thirty days for each offense thereafter.

60-12-10. AUTHORITY TO REFUSE AFFIRMATIONS.

Upon final judgment of conviction of any person after appeal, or in the event no appeal is taken, upon the expiration of the time during which an appeal could have been taken, the chief of the liquor control division [director of the department of alcoholic beverage control] may refuse to accept for any period of months not exceeding three calendar months any affirmation required to be filed by such person.

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

UNITED STATES BREWERS ASSOCIATION, INC., *et al.*,

Plaintiffs-Appellants.

-vs- No. 13,053

JOHN ROMERO, Director of the New Mexico Department of Alcoholic Beverage Control,

Defendant-Appellee.

MOTION FOR REHEARING

Appellants, by their undersigned counsel and pursuant to Rule 19 of the Rules of this Court, respectfully move the Court for a rehearing in this matter. As grounds, Appellants state:

(1) Appellants respectfully submit that the Court has misapprehended the Appellants' argument with respect to the due process issue and has overlooked the applicability of the due process clause of the New Mexico Constitution, Article II, Section 18, as it applies to this case. In the opinion of the Court at page 12, the Court rejected Appellants' due process arguments by relying upon the United States Supreme Court decision in *Joseph E. Seagram & Sons v. Hostetter*, 384 U.S. 35 (1966). Appellants were not relying solely on the due process clause of the Fourteenth Amendment to the United States Constitution, which was the provision involved in *Hostetter*. Appellants were relying to a great extent on the State due process clause, which had been heretofore interpreted by this Court in *Drink, Inc. v. Babcock*, 77 N.M. 277, 421 P.2d 798 (1966). This Court took into consideration the fact that the federal due process clause had not be interpreted as prohibiting

mandatory uniform mark-up provisions. This Court held, however, that the State due process clause was violated by the mark-up provisions, notwithstanding the fact that, as a general proposition, the liquor business might be regulated in the interest of the public welfare. 77 N.M. at 284. It is that same State due process clause that Appellants rely on in this appeal.

(2) Appellants respectfully submit that the opinion of the Court overlooked the opinion of the United States Court of Appeals for the Second Circuit in *United States Brewers Association, Inc. v. Healy*, 692 F.2d 275 (2nd Cir. 1982), which struck down as violative of the Commerce Clause a similar statute enacted by the State of Connecticut. Although the *Healy* case has been appealed by the State of Connecticut to the United States Supreme Court, that Court has not yet taken any action that would indicate the appeal will be successful or even heard formally.

(3) Appellants respectfully submit that the Court has misapprehended the applicability of the Twenty-First Amendment to the State police power and due process issues in this case. At page 12 of the opinion, it is stated that the states have been conferred with something more than a nominal degree of authority in regulating the liquor business by virtue of the Twenty-First Amendment. While that is true as a generality, the Twenty-First Amendment neither enlarges nor decreases the police powers or constitutional provisions of the states in the matter of liquor regulation. It merely provides that the federal government may not interfere in certain respects with the importation and sale of liquor in the various states. The Amendment therefore does not bear upon whether this New Mexico statute violates New Mexico constitutional provisions or exceeds police powers of the state under the due process clause of that constitution.

(4) Appellants respectfully submit that the Court's opinion misapprehends the applicability of *California Retail Liquor*

Dealers Association v. Midcal Aluminum, Inc., 445 U.S. 97 (1980), in which the United States Supreme Court struck down as violative of the Commerce Clause of the United States Constitution a California retail price maintenance statute. The Court looked at the underlying purposes of the Twenty-First Amendment in scrutinizing whether the state statutory scheme was truly a regulation protected by the Twenty-First Amendment's recognition of the state's rights to regulate the importation and sale of alcoholic liquor. *Midcal* expressly recognized that the further the state strayed from the language and purpose of the Twenty-First Amendment and attempted to regulate aspects of liquor not directly related to transportation and importation, the Twenty-First Amendment protection becomes attenuated and must be balanced with the commerce clause protections of a free and competitive national economy. The affidavits presented in this case showed the existence of a concrete case with existing factual issues as to which the competing interests of the Twenty-First Amendment and the Commerce Clause could be weighed and applied. Summary judgment was therefore inappropriate.

WHEREFORE, Appellants respectfully move the Court to grant a rehearing and reconsider the opinion heretofore filed.

Respectfully submitted,

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(Cont. from p. A-7)

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I HEREBY CERTIFY that a true copy of the foregoing was mailed to opposing counsel of record on this 3rd day of August, 1983.

s/ Charles W. Daniels
CHARLES W. DANIELS

APPENDIX C

CONNECTICUT STATUTES

Section 30-63(c) (West Supp. 1982) provides, in pertinent part, as follows:

> Each manufacturer, wholesaler and out-of-state shipper permittee shall post with the department the bottle, can and case price of any brand of goods offered for sale in Connecticut, which price when so posted shall be the controlling price for such manufacturer, wholesaler or out-of-state permittee for the month following such posting . . . A manufacturer or wholesaler may amend his posted price for any month to meet a lower price posted by another manufacturer or wholesaler with respect to alcoholic liquor bearing the same brand or trade name and of like age, vintage, quality and unit container size; provided that any such amended price posting shall be filed before three o'clock P.M. of the fourth business day after the last day for posting prices; and provided further such amended posting shall not set forth prices lower than those being met.

Section 30-63b(b) (West Supp. 1982) provides as follows:

> At the time of posting of the bottle, can and case price required by section 30-63, every holder of a manufacturer or out-of-state shipper's permit, or the authorized representative of a manufacturer, shall file with the department of liquor control a written affirmation under oath by the manufacturer or out-of-state shipper of each brand of beer posted certifying that the bottle, can or case price to the wholesaler permittees during the period of the posting will be no higher than the lowest price at which each such item of beer is or will be sold, offered for sale, shipped, transported or delivered by such manufacturer or out-of-state shipper to any wholesaler in any state bordering this state, at any time during the calendar month covered by such posting.

Section 30-63a(b) (West Supp. 1982) provides as follows:

> No holder of any manufacturer or out-of-state shipper's permit shall ship, transport or deliver within this state, or sell or offer for sale to a wholesaler permittee any brand of beer as defined in section 30-1, at a bottle, can or case price higher than the lowest price at which such item is then being sold or offered for sale or shipped, transported or delivered by such manufacturer or out-of-state shipper to any wholesaler in any state bordering this state.

Section 30-63c(b) (West Supp. 1982) provides as follows:

> In determining the lowest price for which any item of beer is or was sold, offered for sale, shipped, transported or delivered during such posted period by any manufacturer or out-of-state shipper to a wholesaler in any state bordering this state, appropriate reductions will be made for all discounts, rebates, free goods, allowances and other inducements of any kind whatsoever, including depletion and floor-stock allowances, offered or given to any such wholesaler; provided that differentials in price which make only due allowance for differences in state taxes and fees and for the actual cost of delivery are permissible. As used in this section, the term "state taxes and fees" shall mean the excise taxes imposed or the fees required by any state or the District of Columbia upon or based upon a gallon or liter of such alcohol and spirits or each barrel, or fractional unit thereof, of beer and the term "gallon" shall mean one hundred twenty-eight fluid ounces and the term "liter" shall mean one thousand milliliters and the term "barrel" means not less than twenty-eight nor more than thirty-one gallons. A manufacturer or out-of-state shipper of beer shall offer to Connecticut wholesalers all of the sizes, approved by the department of liquor control, of his brand which he offers to any wholesaler in any state bordering this state.